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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 508.

CONSUMER MAIL ORDER ASSOCIATION OF AMERICA, SILVER ROD OF BALTIMORE, INC., MARYDEL SALES, INC., ET AL.,
Appellants,

v.

J. HOWARD MCGRATH, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES, *Respondent.*

Appeal From the United States District Court for the District of Columbia.

PETITION FOR REHEARING.

THURMAN ARNOLD,
MILTON V. FREEMAN,
G. DUANE VIETH,
Counsel for Appellants.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Appellants respectfully petition this honorable Court for rehearing in the above-entitled matter and for full argument after briefs. The summary affirmance of the de-

cision below leaves unresolved a most important problem which the court below did not settle.

The court below decided that it was appropriate to "determine the issue of the validity of the Act so that these parties will know their rights insofar as our decision will enlighten them." (Statement of Jurisdiction, p. 39). Nevertheless, in its opinion the court below did not in fact determine the validity of the Act in the only sense which has meaning for appellants. That court stated "The complaint seeks a declaration that the statute is unconstitutional *without regard to its particular application to a particular state.*" [Italics supplied] It stated that a "general attack" on the statute could not be sustained.

Accordingly, under the opinion below, the appellants are free to raise a question of constitutionality with respect to the particular application of the Act to a particular state in criminal proceedings commenced under the Act. Thus appellant Ruth Clark is subject to possible indictment for failure to file reports with the State of Illinois in connection with her shipments into Illinois although the Illinois Cigarette Tax Act has been declared invalid as applied to interstate commerce. Appellant Balson Sales Company is shipping into Illinois and reporting to the State. It asked the court for a declaration that the Jenkins Act was invalid insofar as it required burdensome and useless reports by appellant Balson Sales Company to the Illinois Tax Commissioner. The complaint (and the affidavits in support thereof) thus contains a specific challenge to the Act in its particular application at least to this particular state.

Similarly, we assume the decision leaves it open for those appellants who are being prosecuted or about to be prosecuted in the various states away from their home to raise the constitutionality of the Jenkins Act insofar as it compels them to report to states whose local cigarette tax laws are invalid as applied to interstate shipments.

It is submitted that in leaving these questions open the court below has not carried out its avowed purpose of let-

ting the appellants "know their rights". This Court by affirmance without discussion has likewise left appellants uninformed of their rights.

It is respectfully submitted that appellants have a right to a complete adjudication on the facts alleged and proved in this action. They should not be relegated to raising in subsequent proceedings issues ripe for adjudication here. The appellants' rights to an adjudication can be satisfied only by a decision of this Court which meets the issue left unresolved by the opinion of the court below. We urge that this Court should give appellants either a firm declaration that the Jenkins Act is constitutional regardless of the invalidity of the law of the particular state to which reports must be forwarded, or that the Act is constitutional only as applied to require reports to states who have valid tax laws. Any other course will result in uncertainty and breed further litigation which would be rendered unnecessary by a declaration by this Court of the scope of its ruling.

WHEREFORE, appellants pray that rehearing be granted, that argument be permitted and that, in any event, this Court render an opinion which will afford appellants the knowledge of their rights which the court below desired them to have, and to which they believe they are entitled.

Respectfully submitted,

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MILTON V. FREEMAN,
G. DUANE VIETH,
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I hereby certify that the attached petition for rehearing is presented in good faith and not for delay.

THURMAN ARNOLD.